

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012031078

ORDER DENYING REQUEST FOR
RECONSIDERATION

On September 17, 2012, Student filed a Motion for Leave to Amend and a Third Amended Complaint (complaint). At the time the motion to amend was filed, a Prehearing Conference (PHC) was set for October 3, 2012, and a Due Process Hearing calendared for October 10, 11, 15, 16, 17, and 18, 2012. All parties filed PHC statements including witness and exhibits lists on September 28, 2012.

On September 28, 2012, OAH issued an order granting Student's unopposed motion to amend and a scheduling order setting a mediation for November 1, 2012, a prehearing conference on November 14, 2012 and a hearing beginning November 21, 2012, and continuing day to day thereafter.

On October 2, 2012, Baldwin Park Unified School District and Covina-Valley Unified School District (collectively Districts) filed an expedited motion for reconsideration, including a request to reinstate the October PHC and hearing dates. On October 3, 2012, Student filed an opposition to Districts' motion for reconsideration and Districts filed a letter response.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION AND ORDER

Here, Districts' request for reconsideration is not based upon new or different facts or law. Instead, Districts contend they relied upon prior agreements between the parties, Student's statement he would not seek a continuance, and the fact they filed their PHC Statements, witness and exhibit lists on September 28, 2012, to justify their belief OAH was not required to vacate dates set before the third amended complaint was filed. However, this explanation, which fails to consider that District should have been aware that amending a complaint requires all dates to be reset in order to afford District an opportunity to conduct a resolution session, does not amount to a showing of different facts, circumstances, or law justifying reconsideration. Had Districts intended to proceed on the dates set, it was incumbent upon them to oppose the motion to amend or file a written stipulated waiver of the resolution session (20 U.S.C. §1415(c)(2)(E)(i).) Absent a written waiver of the resolution session, OAH had no choice but to reset all dates because the filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Districts further request OAH reinstate the previous hearing dates on the grounds that the hearing date is now set to begin the day before a national holiday (Thanksgiving) and that witnesses or counsel are not available the week after the holiday. Student's counsel opposes, arguing Student would be prejudiced because he is no longer able to proceed on the October dates. An inconvenient date is not grounds to reconsider the motion to amend, particularly where the parties should have, but did not, file a stipulated agreement to the existing dates that included a waiver of the resolution session. Accordingly, Districts' request for reconsideration and to reinstate the vacated dates is denied. The matter will proceed as scheduled. This order is without prejudice to a timely and properly filed motion for continuance to mutually agreeable dates, or by motion documenting that the requesting party attempted to find agreeable dates but the other party refused.

Accordingly, Districts' request for reconsideration is denied.

IT IS SO ORDERED.

Dated: October 05, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings